

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

NICK HUGHES,)	No. C 11-01185 SBA (PR)
)	
Petitioner,)	<u>ORDER OF DISMISSAL</u>
v.)	
)	
JOHN MARSHALL, Warden,)	
)	
Respondent.)	


Petitioner Nick Hughes, a state prisoner, filed the instant pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254.

In an Order dated December 20, 2011, the Court granted Respondent's motion to dismiss petition upon concluding that the petition was mixed, that is, that it contained both exhausted and unexhausted issues. The general rule is that a federal district court must dismiss a federal habeas petition containing any claim as to which state remedies have not been exhausted. See Rose v. Lundy, 455 U.S. 509, 522 (1982). However, instead of an outright dismissal of the action, the Court allowed Petitioner to choose whether he wanted to elect from three choices, namely to dismiss the unexhausted issues only, voluntarily dismiss the entire petition, or ask for a stay. Petitioner was instructed to notify the Court of his choice within thirty days and that his failure to do so will result in the dismissal of his petition.

More that thirty days have passed, and Petitioner has not responded to the Court's December 2011 Order. This petition therefore is dismissed as mixed. Accordingly, this action is DISMISSED without prejudice to filing a new federal habeas action containing a petition with only exhausted claims. The Court has rendered its final decision on this matter; therefore, this Order TERMINATES Petitioner's case. The Clerk of the Court shall terminate all pending motions and close the file.

IT IS SO ORDERED.

Dated: 1/27/12


SAUNDRA BROWN ARMSTRONG
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

NICK R HUGHES,

Plaintiff,

v.

JOHN MARSHALL et al,

Defendant.

Case Number: CV11-01185 SBA

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on January 30, 2012, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Nick R. Hughes V-59310
California Men's Colony
P.O. Box 8101
San Luis Obispo, CA 93409

Dated: January 30, 2012

Richard W. Wieking, Clerk
By: LISA R CLARK, Deputy Clerk